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347
DATE MAILED: 07/10/91

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on 6/12/91 ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. ☒ Notice of References Cited by Examiner, PTO-892.
2. ☒ Notice re Patent Drawing, PTO-948.
3. ☒ Notice of Art Cited by Applicant, PTO-1449. (2)
4. ☐ Notice of Informal Patent Application, Form PTO-152
5. ☐ Information on How to Effect Drawing Changes, PTO-1474.
6. ☐

Part II SUMMARY OF ACTION

1. ☒ Claims 1-14 are pending in the application.
Of the above, claims are withdrawn from consideration.
2. ☐ Claims have been cancelled.
3. ☐ Claims are allowed.
4. ☒ Claims 1-4 and 6-14 are rejected.
5. ☒ Claims 5 is objected to.
6. ☐ Claims are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. ; filed on
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

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The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-4, 8-12 and 14 are rejected under 35 U.S.C. § 103 as being unpatentable over Brewer et al in view of Piening. The patent to Brewer et al discloses all the claimed limitations but lacks clapper or pivoted typed check valves within the conduit arrangement. Note fig. 10 in particular which shows the generally claimed inverted "U" shape. The patent to Piening disclose a backflow preventer device comprising, in series, two pivoted, clapper type valves for the purpose of assuring no backflow in the pipe and ease of assembly, construction etc. Since both patents are from the same field of endeavor the purpose disclosed by Piening would have been recognized in the pertinent art of Brewer et al. It would have been obvious at the time the invention was made to a person having ordinary skill in

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the art to substitute for the reciprocating check valves of Brewer, serial pivoting clapper type valves for the purpose of easy assembly and construction as recognized by Piening. In this modification the check valves would be serially arranged in the horizontal section of the piping of Brewer. When these check valves are fully open fluid is "directed" in a second direction towards the second valve by the first valve. Additionally there is no claim language distinguishing one direction from another. They could read on the same or different directions. Re claims 11 and 12 the "average" path will be about 180 degrees, when the valves are fully open, from the inlet conduit to the outlet conduit. Re claims 8 note the downward sloping wall 10 of Piening. Claims 2-4 are met by Brewer et al.

Claim 6 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 4,989,635 in view of Brewer et al. The device of the patented claim includes all the features instantly claimed but lacks being serially arranged in a back flow prevention system of invented "U" shape. The patent to Brewer et al disclose that it is known to employ plural serial check valves in a back flow preventing system arranged in an inverted "U" shape to accommodate plumbing and/or space requirement^s. Since both the patented claim and Brewer et al are from the same field of endeavor, the purpose disclosed by Brewer

et al would have been recognized in the pertinent art of the patented claim. It would have obvious at the time the invention was made to a person having ordinary skill in the art to employ the device of the patented claim in a serial check valve backflow preventing system in an inverted "U" shape to accommodate space for the purpose of providing a backflow preventing system as recognized by Brewer et al.

Claim 7 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 8 of U.S. Patent No. 4,989,635 in view of Brewer et al. The device of the patented claim includes all the features instantly claimed but lacks being serially arranged in a backflow prevention system of invented "U" shaped. The patent to Brewer et al discloses that it is known to employ plural serial check valves in a backflow preventing system arranged in an inverted "U" shape to accommodate plumbing and/or space requirements. Since both the patented claims and Brewer et al are from the same field of endeavor the purpose disclosed by Brewer et al would have been recognized in the pertinent art of the patented claim. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ the device of the patented claim in a serial check valve backflow preventing system in an inverted "U" shape to accommodate space for the purpose of providing a backflow preventing system as recognized

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by Brewer et al.

The obviousness-type double patenting rejection is a judicially established doctrine based upon public policy and is primarily intended to prevent prolongation of the patent term by prohibiting claims in a second patent not patentably distinct from claims in a first patent. *In re Vogel*, 164 USPQ 619 (CCPA 1970). A timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R. § 1.78(d).

Claim 13 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 13 is confusing due to the plural recitations of "an inlet port" in lines 9 and 15. Considering the scope and breadth of the claim the above recitation would appear to require two separate inlet ports in the housing with only one defined inlet conduit.

Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Claim 13 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. § 112.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication should be directed to John Rivell at telephone number (703) 308-2599.

J. RIVELL:th
July 08, 1991



JOHN RIVELL
PRIMARY EXAMINER
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